

Title: Ethical standards as gap-fillers in the legal governance of autonomous weapon systems

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Since 1977, the net of Article 36 of Additional Protocol I to the Geneva Conventions has been considered to be broad in its mesh but closely knitted to sieve weapons that are illegal per se from making it to the arsenals of states. Yet, with the advent of weapon systems that use artificial intelligent (AI) technologies, is it possible that a sinister weapon can slip through the meshes of Article 36? **The research questions whether, without consideration and elevation of ethical standards, existing law is adequate to govern autonomous weapon systems.**

Throughout the discussions of the United Nations Group of Governmental Experts on Lethal Autonomous Weapon Systems (UNGGE), there has been an emphasis on the importance of legal reviews of new weapons. In the UNGGE report following the August 2019 discussions, states agreed that legal reviews of new weapons ‘are a useful tool to assess nationally whether potential weapons systems based on emerging technologies in the area of lethal autonomous weapons systems (AWS) would be prohibited by any rule of international law applicable to that state in all or some circumstances.’

While it is worthwhile that states involved in the UNGGE discussions have agreed on the importance of legal reviews of new weapons, it may be that **the utility of legal reviews of new weapons depends on whether or not the existing legal standard(s) against which one measures new weapons is adequate to govern such weapons.** *That which is inadequate cannot be an effective yardstick.*

The standard of review as provided for in Article 36 of Additional Protocol I is legalistic in nature as it only gives reference to legal provisions of Article 36 and other rules of international law. While it is plausible that new weapons must not undermine relevant international law, this research questions whether an Article 36 review process that aims to determine the legality and acceptability of weapon systems on the basis of existing international law proceeds on a wrong assumption that such law is adequate to govern autonomy in weapon systems and that weapon systems only raise legal issues.

In as far as the governance of autonomy in weapon systems is concerned, **this research questions whether there is a lacuna or gap in existing international law.** While a lacuna has been generally defined as ‘a situation where the absence of a law or legal norm prevents an inherently illegal situation from being addressed, or where the applicable law is incomplete’, it has also been noted that a lacuna can be the ‘absence of something that arguably ought to be there’.

The ICRC has already observed that **the challenges raised by autonomous weapon systems go ‘beyond questions of the compatibility with our laws to encompass fundamental questions of acceptability to our values’.**

This research aims to identify the gaps in existing law and identify ethical standards that ought to be codified into legal principles in as far as governance of AWS is concerned.